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In re Application of :  
JOHNS :  
Application No.: 10/579,867 : COMMUNICATION  
Filing Date: 18 May 2006 :  
Atty. Docket No.: MSX-106(PCT/US) :  
For: SILVER SOLDER OR BRAZING ALLOYS AND :  
THEIR USE :

This application is before the Office of PCT Legal Administration for issues arising under 37 CFR 1.495.

### **BACKGROUND**

On 18 November 2004, applicant filed international application PCT/GB04/50027 which claimed priority to an earlier application filed 19 November 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 19 May 2006.

On 18 May 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by authorization for payment of fees, a preliminary amendment; a declaration of the inventor; an Information Disclosure Statement; an Application Data Sheet; an assignment document and a substitute specification.

On 20 March 2007, applicant was mailed a "Notice of Acceptance" (Form PCT/DO/EO/903).

### **DISCUSSION**

An examination of the filed specification finds that the application was identified as "a continuation-in-part of PCT/GB04/50027." Applicant filed the application utilizing form PTO-1390 the transmittal letter for entering the national stage in the United States under 35 U.S.C. 371. Thus, it is unclear what type of application applicant intended to file on 18 May 2006. Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). (See 37 CFR 1.494(f) and 37 CFR 1.495(g)). In addition, section 1893.03(a), page 1800-114 of the MPEP states that "[i]f there are any conflicting instructions as to whether the filing is under 35 U.S.C. 111(a) or 35 U.S.C. 371, the application will be accepted as filed

under 35 U.S.C. 111(a)." Therefore, the application will be processed as an application under 35 U.S.C. 111(a).

**CONCLUSION**

The Form PCT/DO/EO/903 mailed 20 March 2007 is hereby **VACATED**.

This application is being forwarded to the Office of Patent Application Processing for processing as a 35 U.S.C. 111(a) application.

A handwritten signature in black ink, appearing to read 'Derek A. Putonen'.

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